

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1094 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
5. Whether it is to be circulated to the Civil Judge? No

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SAURASHTRA CO OPERATIVE

HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

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Appearance:

MR PS CHAMPANERI for Petitioner

Ms.Harsha Devani, A.G.P. for Respondent No. 1

M/S THAKKAR ASSOC. for Respondent No. 2, 3, 4, 5, 6, 7

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/09/1999

ORAL JUDGEMENT

1. Through this writ petition the petitioner has challenged the orders contained in Annexures : F dated 6.7.1992 and G dated 21.8.1992 to the writ petition and has prayed that the same may be quashed. Further prayer in the petition is that the writ of mandamus may be issued directing the respondents to grant exemption under

section 20 of the ULC Act in pursuance of petitioner's application dated 21.2.1990.

2. Brief facts are that the petitioners applied under Section 20(1) of the Urban Land (Ceiling & Regulation) Act, 1976 on 21.2.1990 seeking exemption under Section 20(1) of the ULC Act. The said application was taken up for hearing. Adequate opportunity of hearing was given by the Authority. The Authority demanded certain information and additional evidence from the petitioner. The petitioner, however, failed to furnish additional information and additional evidence. Petitioner also failed to appear though the case was adjourned several times. Under these circumstances application u/s.20(1) of the Act was rejected on 21.8.1993 vide Annexure : G to the petition. Naturally when the petitioner did not appear before the Authority nor furnished additional evidence and information sought by the Authority, the Authority was left with no option, but to refuse to grant exemption as prayed for u/s.20(1) of the Act. Thereafter application for reconsideration of the order dated 6.7.1992 Annexure : F was moved which was also rejected vide order dated 21.8.1993, Annexure : G. These two orders are under challenge in this writ petition.

3. Learned A.G.P. argues that the matter has abated and nothing survives in this writ petition. The argument to the contrary on behalf of the petitioner has no substance. Urban Land (Ceiling & Regulation) Act, 1976 was repealed through Act No.15 of 1999 which was adopted by the State of Gujarat on 30.3.1999. Sections 3 & 4 of the Repealing Act are relevant which have to be considered for appreciating the objections raised by the learned A.G.P.

4. Section 3(1)(b) of the Repealing Act provides that repeal of the Principal Act shall not affect the validity of any order granting exemption under sub.sec.1 of Section 20 or any action taken thereunder notwithstanding any judgment of any court to the contrary. The contention of the learned Counsel for the petitioner that the matter survives cannot be accepted because the Legislature had clearly in its mind that only the validity of order granting exemption u/s.20(1) shall be saved. The Legislature never introduced the word "order refusing to grant exemption u/s.3(1)(b) of the Repealing Act." In the case before me exemption under Section 20(1) of the Act was refused. Consequently such order is not saved by the provisions contained under S. 3 of the Repealing Act.

5. So far as abatement is concerned Section 4 of the Repealing Act has also to be considered. It provides that all proceedings relating to any order made or purported to have been made under the Principal Act pending immediately before commencement of this Act before any Court, Tribunal or other Authority shall abate. The proviso to this section is not attracted to the facts of the case in this writ petition. If it is considered that the writ petition was filed against the order refusing to grant exemption u/s.20(1) of the Act the writ petition which is a proceeding arising out of such order shall abate in view of Section 4 of the Repealing Act.

Consequently nothing survives in this petition. The petition, therefore, dismissed as abated. No order as to costs.

sd/-

Date : September 24, 1999 ( D. C. Srivastava, J. )

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